

BEFORE THE POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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Statutory Review of the System for  
Regulating Rates and Classes for  
Market Dominant Products

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Docket No. RM2017-3

COMMENTS OF PITNEY BOWES INC.

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Pitney Bowes Inc. (Pitney Bowes) respectfully submits these comments in response to Order No. 4258,<sup>1</sup> initiating the second phase of the Postal Regulatory Commission's (Commission) review of the market dominant rate system as required by the Postal Accountability and Enhancement Act (PAEA).<sup>2</sup>

## **I. INTRODUCTION AND SUMMARY**

These comments focus on three aspects of the Commission's decision: (1) its proposed changes to the workshare regulations; (2) its recommended changes to certain procedural rules; and (3) its findings regarding the statutory mechanism for allocating institutional costs.

First, the Commission's proposed changes to the workshare regulations are a significant improvement. The Commission correctly concluded that the current system has not increased pricing efficiency and that pricing incentives were not maximized to reduce costs and increase operational efficiency.<sup>3</sup> Accordingly, the Commission held that workshare discounts must be set consistent with the principles of efficient component pricing (ECP) to achieve these statutory goals. Specifically, the Commission proposes to establish bands with upper and lower limits on workshare discount passthroughs to ensure that discounts are set closer to ECP. By applying the principles of ECP, the proposed changes will promote operational and pricing efficiency and benefit the Postal Service, mailers, and consumers. Pitney Bowes supports these proposed changes with two suggested modifications: (1) narrower bands to maximize efficiency in the system; and (2) clarification that the 3 year period to achieve compliance be limited only to those workshare discounts currently out of compliance.

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<sup>1</sup> Order No. 4258, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products (NPRM) (Dec. 1, 2017).

<sup>2</sup> See Pub. L. 109-435, 120 Stat. 3198 (Dec. 20, 2006). The PAEA amends various sections of title 39 of the United States Code. Unless otherwise noted, section references in these comments are to sections of title 39.

<sup>3</sup> See Order No. 4257 at 145.

Second, the Commission's proposed modifications to the procedural requirements for rate adjustment filings will improve procedural regularity and transparency by giving the Commission and interested parties more time to review and assess rate adjustment filings.

Finally, the Commission properly held that the current mechanisms under sections 3633(a)(3) and 3633(b) have proven effective in appropriately allocating institutional costs between market dominant and competitive products. The existing mechanisms have allowed the Commission to conduct several comprehensive assessments of the allocation of institutional costs and a parallel proceeding is currently being undertaken on these very issues; therefore, no further action is required in this proceeding.

## **II. DISCUSSION**

### **A. Changes in the Workshare Rules Are Required to Maximize Pricing and Operational Efficiency**

In the first phase of this proceeding, the Commission undertook a systematic review of each of the statutory objectives. As applied to worksharing, the PAEA directs the Commission to establish a system that maximizes incentives to reduce costs and improve efficiency (Objective 1), maintains just and reasonable rates (Objective 8), and that takes into account the degree of preparation of mail and the effect on costs (Factor 5), the importance of pricing flexibility to encourage mail volume growth and operational efficiency (Factor 7), and the need for increased efficiency and reduced costs, as a means of maintaining high-quality, affordable postage rates (Factor 12).<sup>4</sup>

The Commission measured pricing efficiency under the current system, in part, by analyzing how closely workshare discounts adhered to ECP. The data show that workshare

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<sup>4</sup> See 39 U.S.C. §§ 3622(b)(1) and 3622(c)(5), (7), and (12).

prices since the passage of the PAEA generally were not set consistent with ECP.<sup>5</sup> The Commission specifically held that “the Postal Service was able to adjust prices to achieve ECP and did not do so.”<sup>6</sup> Thus, the Commission concluded that the current system did not increase pricing efficiency and failed to maximize incentives to allow the Postal Service to achieve operational efficiency and improved financial stability.<sup>7</sup>

The Commission’s expectation when it established the modern rate system in 2007 was that the Postal Service would continue to set workshare discounts in accordance with ECP under the PAEA.<sup>8</sup> Unfortunately, that did not happen. After ten years’ experience, it is clear that the current system is not maximizing incentives to reduce costs and increase efficiency as required by the statutory objectives and factors; therefore, the Commission correctly held that changes to the workshare rules are required.

#### **B. The Commission Has the Authority to Require that the Workshare Discounts be Set Consistent with the Efficient Component Pricing Rule**

A threshold question is whether the Commission has the authority to review worksharing issues as part of the 10 year review. Consistent with Order No. 3673,<sup>9</sup> the majority of commenters proceeded under the view that worksharing issues were within the scope of the ten year review and suggested constructive changes to the workshare regulations to promote more efficient pricing.<sup>10</sup> Unlike the majority of commenters, however, the Postal Service and the American Postal Workers Union (APWU) contend that the Commission lacks the legal authority

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<sup>5</sup> See *id.*, at 138.

<sup>6</sup> *Id.*, at 139.

<sup>7</sup> See *id.*, at 139, 216-19.

<sup>8</sup> Docket No. RM2007-1, Order No. 43 (Oct. 29, 2007) at 41 (ECP should serve as a “guiding principle.”).

<sup>9</sup> See Docket No. RM2017-3, Order No. 3673, Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products (Dec. 20, 2016) at 2.

<sup>10</sup> See, e.g., Docket No. RM2017-3, Comments of American Bankers Association (Mar. 20, 2017) at 11; Comments of Alliance of Nonprofit Mailers et al. (Mar. 20, 2017) at 11-12, 82; Letter from Chairman Chaffetz and Chairman Meadows (Mar. 20, 2017) at 2; Comments of Major Mailers Association et al. (Mar. 20, 2017) at 19, 71; Comments of Pitney Bowes Inc. (Mar. 20, 2017) at 3-4; and Comments of Parcel Shippers Association (Mar. 20, 2017) at 6.

to address workshare issues as part of the 10 year review because the workshare provisions in section 3622(e) are “outside of the “system” the Commission is charged with reviewing.”<sup>11</sup> This argument fails on several levels and was properly dismissed by the Commission.

First, the contention that the workshare provisions are excluded from the scope of review contradicts the Postal Service’s stated position that “the Commission’s review must cover all features of the current “system” that have been “established under” Section 3622 as a whole[.]”<sup>12</sup> The Postal Service and APWU’s position also fails as a practical matter because, if adopted, it would exclude from the mandatory review of the modern rate system the rate provisions that directly govern over 80 percent of market dominant mail. The workshare rules are a critical component of the overall pricing system, to ignore them during this assessment would negatively affect the Commission’s ability to consider the system in a holistic manner.

Second, the argument fails because it would read the term “section” out of the statute.<sup>13</sup> Section 3622(d)(3) states that the Commission “shall review the system for regulating rates and classes for market dominant products established under this section[.]”<sup>14</sup> Subsection 3622(e) is part of section 3622. The attempt to draw a parallel with the preferred rates provisions also misses the mark because those provisions appear in section 3626, not section 3622.<sup>15</sup>

The Postal Service also opposed setting a floor or lower band on workshare discount passthroughs, arguing that the Commission should not make such a change because Congress did

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<sup>11</sup> APWU at 5; *see also* Postal Service Comments at 28-30. The Greeting Card Association (GCA) also argued that the Commission does not have the authority to make changes to the workshare rules that require a modification to section 3622(e). *See* GCA Comments at 30-37. The Commission rejected GCA’s position, but it did not need to reach that issue with respect to the proposed changes to the workshare rules because, as discussed below, it does not necessarily follow that all changes to the workshare rules require a modification of section 3622(e).

<sup>12</sup> Postal Service Comments, App. A at 4.

<sup>13</sup> *See* Postal Service Comments at 29.

<sup>14</sup> 39 U.S.C. § 3622(d)(3).

<sup>15</sup> *See* Postal Service Comments at 29-30.

not require it.<sup>16</sup> The Commission properly rejected this argument as well. The Commission has the authority to establish, by regulation, a lower band on workshare passthroughs under sections 3622(a) and 3622(d)(3), and pursuant to its general regulatory authority under section 503.<sup>17</sup> The Commission established the current workshare rules as part of the regulations establishing the modern rate system pursuant to section 3622(a);<sup>18</sup> thus, changes to those same rules that do not require the modification of any statutory provision are clearly within the scope of the Commission's authority.

Any argument that the Commission does not have the legal authority to establish, by regulation, a lower band on workshare discount passthroughs to further the efficiency goals of the PAEA must be dismissed as inconsistent with settled principles of administrative law. Section 3622(e)(2) states that "[t]he Postal Regulatory Commission shall ensure that such discounts do not exceed the cost that the Postal Service avoids as a result of workshare activity," unless specified exceptions are met.<sup>19</sup> The statute sets a presumptive ceiling for workshare discounts but is silent with respect to a lower band;<sup>20</sup> thus, nothing in the statute prevents the Commission from establishing a lower band by regulation.<sup>21</sup> The decisional law makes clear that agencies have broad authority to act beyond Congressional requirements provided the agency action is not prohibited by the statute. *See, e.g., Northeast Hosp. Corp. v. Sebelius*, 657 F.3d 1, 4 (D.C. Cir. 2011) (*quoting Nat'l Cable & Telecomm. Ass'n v. FCC*, 567 F.3d 659, 663 (D.C. Cir.

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<sup>16</sup> *See* Postal Service Comments at 229.

<sup>17</sup> 39 U.S.C. § 503 ("The Postal Regulatory Commission shall promulgate rules and regulations and establish procedures, . . . and take any other action they deem necessary and proper to carry out their functions and obligations to the Government of the United States and the people as prescribed under this title.").

<sup>18</sup> *See* Docket No. RM2007-1, Order No. 43, Order Establishing Ratemaking Regulations For Market Dominant And Competitive Products (Oct. 29, 2007).

<sup>19</sup> *See* 39 U.S.C. § 3622(e)(2)(A)-(D).

<sup>20</sup> *See* Order No. 4257 at 34 ("The PAEA was silent with regard to workshare discounts set less than avoided costs.").

<sup>21</sup> *See* Docket No. ACR2007, Annual Compliance Determination (Mar. 27, 2008) at 97 ("the requirements of the PAEA do not directly address workshare discounts that are below 100 percent of avoidable costs").

2009) (deferring to an agency construction that was not “unambiguously foreclose[d]” by the statute)); *Cablevision Systems Corp. v. FCC*, 649 F.3d 695, 704 (D.C. Cir. 2011)(citing *National Cable & Telecommunications Assn. v. Brand X Internet Services*, 545 U.S. 967, 980-83 (2005) (“if Congress has not unambiguously foreclosed the agency’s construction of the statute, we defer to the agency provided its construction is reasonable”).

The Commission properly held that establishing a lower band on workshare discounts is not only permitted, but is required to achieve the statutory purpose of Objective 1 and Factors 5, 7, and 12, thus, the Commission’s action is permissible and would be entitled to substantial deference. *See UC Health v. NLRB*, 803 F.3d 669, 675 (D.C. Cir. 2015) (requiring deference if an agency construction is “reasonable and consistent with the statute’s purpose”); *Kennecott Utah Copper Corp. v. United States Dept. of Interior*, 88 F.3d 1191, 1206 (D.C. Cir. 1996) (holding that *Chevron* step two requires affirmance of the agency if it considered the matter in a detailed and reasoned fashion and its interpretation is arguably consistent with the underlying statutory scheme).

A related question is whether the Commission can revise its workshare rules to permit workshare discount passthroughs that exceed 100 percent of the avoided costs. Although the statute imposes a limitation on workshare discount passthroughs exceeding avoided costs, it allows various exceptions to the general rule.<sup>22</sup> The Commission has regularly cited these exceptions in allowing the Postal Service to set workshare discount passthroughs above 100 percent. For example, in the most recent Annual Compliance Determination the Commission

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<sup>22</sup> *See* 39 U.S.C. § 3622(e)(2)(A-D).

recognized numerous exceptions for different workshare discounts with passthroughs above 100 percent.<sup>23</sup>

Establishing an upper band as a mechanism for preventing workshare discounts set substantially above avoided costs is consistent with the existing statutory exceptions contained in section 3622(e). The upper band merely organizes the qualitative considerations in section 3622(e)(2)(A-D) within a quantitative range. Under the Commission's proposal, compliance with the statutory exceptions in section 3622(e)(2)(A-D) will be assessed in relation to the applicable bands. The range between the upper and lower bands provides a safe harbor for workshare discounts that can accommodate year-to-year fluctuations in the modeled cost avoidance; therefore, the quantitative bands serve the same purpose as the qualitative exceptions in addressing rate shock, efficiency, or negative contribution concerns. Additionally, section 3622(e)(2)(A) and (B) permit exceptions to the general limitation for new or different service offerings, new workshare discounts, and for existing workshare discounts as necessary to promote operational efficiency and mitigate rate shock, provided these discounts are phased out over time. The proposed three year transition period is an alternative means of achieving these same objectives. Similarly, the Postal Service must continue to submit a report for any new workshare discount as required by section 3622(e)(4).<sup>24</sup>

To the extent the Commission has the authority under section 3622(d)(3) to modify the statutory requirements of section 3622, it can use that authority to modify the provisions of 3622(e). Even if the Commission does not have the authority to modify the statutory provisions

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<sup>23</sup> See Docket No. ACR2016, Annual Compliance Determination Report (Mar. 28, 2017) at 15, 25-29, and 34-37 (justifying passthroughs in excess of 100 percent pursuant to section 3622(e)(2)(B) (the amount of the discount is necessary to mitigate rate shock), (C)(the discount is provided in connection with mail consisting exclusively of educational, cultural, scientific, or informational value), and (D)(reduction or elimination of discount would impede operational efficiency)).

<sup>24</sup> See Order No. 4258 at 95, n.94.



of section 3622, it would still have the authority to establish, by regulation, a lower band on passthroughs. Establishing a lower band would be permissible under any interpretation of the Commission's review authority because it does not require a modification of any statutory provision. The Commission has the inherent regulatory authority pursuant to sections 3622(a), 3622(d)(3), and 503 to adopt regulations that are consistent with the purpose of the statute. Similarly, even if the Commission's review authority is more limited, it has the authority to establish, by regulation, an upper band that is consistent with section 3622(e) and with the purpose of the statute.

**C. The Commission's Proposed Revisions to the Workshare Rules Should be Adopted with Modifications to Maximize Pricing and Operational Efficiency**

The Commission proposes to establish bands - ranges of upper and lower limits - for workshare discount passthroughs. The proposed changes are designed to eliminate the inefficient price signals that result from setting workshare discounts substantially below or substantially above avoided costs. Workshare discount passthroughs that are set within the range are deemed compliant; workshare discount passthroughs that are set outside of the range are noncompliant, subject to a three year grace period.<sup>25</sup> Specific, quantifiable upper and lower limits will provide the Commission with a bright-line rule for assessing compliance and will help the Postal Service use its pricing flexibility to promote operational and pricing efficiency.

Pitney Bowes supports the Commission's proposal to require that workshare discounts are set closer to ECP for the reasons stated by the Commission:

workshare discounts reflect ECP and result in the most efficient outcome when they are set equal to their corresponding avoided costs. When a discount equals its avoided cost, the Postal Service neither gives too great a discount (*i.e.*, the discount exceeds what it costs the Postal Service to perform the work) nor too little a discount (*i.e.*, the discount is less than what it costs the Postal Service to perform the work, and although a mailer could perform the work at a lower cost

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<sup>25</sup> See Order No. 4258 at 93.

than the Postal Service, it may not if the cost to the mailer for performing the work exceeds the amount of the discount). This type of pricing efficiency also promotes fair competition, because it allows mailers to determine if they can prepare the mail at a lower cost than paying the Postal Service to do the work.

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[Therefore], prices are most efficient when workshare discounts are set equal to avoided costs. . . . the Commission determines that the system achieves efficient prices if prices adhere as closely as practicable to ECP. . . . The further from 100 percent a passthrough is, the less efficient the pricing.<sup>26</sup>

Pitney Bowes urges the Commission to adopt further modifications to maximize incentives to reduce costs and increase efficiency, consistent with Objective 1, taking into account Factors 5, 7, and 12.

#### 1. The Bands Should be More Narrowly Drawn to Maximize Pricing Incentives

The concept of establishing bands for workshare discount passthroughs is a reasonable and balanced approach; however, the proposal should be refined to ensure that it properly maximizes efficiency. The Commission proposes to require that for all products other than Periodicals, workshare discount passthroughs must be set within a range of 85 percent to 115 percent of the modeled costs avoided.<sup>27</sup> A 30 percent range is too permissive, especially as it applies to mature, high-volume automation letter mail products in First-Class and Marketing Mail.

Objective 1 requires the Commission to design a rate system to “*maximize* incentives to reduce costs and increase efficiency.”<sup>28</sup> In its initial scoping order, the Commission defined Objective 1, as it applied to worksharing, as follows: “using workshare discounts, to the *fullest extent possible* to incentivize the reduction of costs and increases in operational and pricing flexibility.”<sup>29</sup> A 30 percent range does not *maximize* incentives or use workshare discounts *to the*

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<sup>27</sup> See Order No. 4258 at 93; proposed 39 CFR 3010.261(c).

<sup>28</sup> 39 U.S.C. § 3622(b)(1) (emphasis added).

<sup>29</sup> Order No. 3673 at 4 (emphasis added).

*fullest extent possible* to reduce costs and increase efficiency. A tighter range is required. The Commission should revise its proposal to set the upper and lower limits at 95 percent and 105 percent. A narrower range is compelled by the statutory command to “maximize” incentives in Objective 1. Tighter bands would also move workshare discounts closer to ECP and would mitigate concerns regarding excessive passthroughs.

The Commission’s review of the history of workshare discounts under the PAEA showed that in the first rate case following enactment of the PAEA (Docket No. R2008-1) over half of all workshare discounts had passthroughs between 85 and 115 percent and nearly one-third had passthroughs between 95 and 105 percent.<sup>30</sup> In comparison, ten years later in Docket No. R2017-1, only 24 percent of all workshare discounts had passthroughs between 85 and 115 percent and only 7 percent had passthroughs between 95 and 105 percent.<sup>31</sup> This history led the Commission to conclude that the Postal Service did not use its pricing flexibility to set prices “as closely as practicable to ECP” and thus did not maximize pricing efficiency.<sup>32</sup> Further, the Commission found that the Postal Service’s “pricing strategy may have harmed operational efficiency within the postal system because the Postal Service may have processed more mail than it otherwise would have if efficient price signals were sent.”<sup>33</sup>

The Commission’s review of the history of workshare discounts under the PAEA confirms that clear regulatory standards are necessary to maximize incentives for operational and pricing efficiency. Recent improvements in the First-Class Mail and Marketing Mail Automation Letters rate design confirm that it is feasible for the Postal Service to set workshare

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<sup>30</sup> See Order No. 4257 at 138 and 217.

<sup>31</sup> See *id.*

<sup>32</sup> See *id.*, at 139.

<sup>33</sup> *Id.*, at 218.

discounts for products with substantial mail volumes and revenues within a 95 percent to 105 percent band.<sup>34</sup>

The proposed bands may be narrowed without unduly constraining the Postal Service's pricing flexibility. Objective 4 requires the Commission to "allow the Postal Service pricing flexibility."<sup>35</sup> Factor 7 requires the Commission to take account of "the importance of pricing flexibility to encourage increased mail volume and operational efficiency."<sup>36</sup> Reading Objective 4 and Factor 7 in concert, it is clear that the PAEA recognizes the importance of using pricing flexibility as a means to encourage increased mail volume and operational efficiency.

The Commission recognized that the PAEA promotes pricing flexibility across multiple dimensions,<sup>37</sup> and that the Postal Service's pricing flexibility would be largely unaffected by the proposed changes to the workshare rules. Specifically, the proposed changes to the workshare rules would not interfere with the Postal Service's procedural pricing flexibility. Nor would the proposed changes affect the Postal Service's core pricing flexibility to set different pricing relationships between different products, including promotional pricing or other policy based pricing differentials. The proposed changes would only affect workshare prices. As the Commission acknowledged, setting upper and lower limits helps balance the efficiency and pricing flexibility objectives of the statute by allowing the Postal Service the discretion to set prices within the band.<sup>38</sup>

A narrower band would help the Postal Service use its pricing flexibility to maximize incentives to increase operational and pricing efficiency consistent with all of the relevant

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<sup>34</sup> See Docket No. ACR2017, USPS-FY17-3, FY17 3 Workshare Discount Tables.xls, "FCM Bulk Letters, Cards" and "Marketing Mail Letters."

<sup>35</sup> 39 U.S.C. § 3622(b)(4).

<sup>36</sup> 39 U.S.C. § 3622(c)(7).

<sup>37</sup> See Order No. 4257, at 90-99.

<sup>38</sup> See Order No. 4257 at 93.

statutory objective and factors. Accordingly, Pitney Bowes recommends that the Commission modify proposed 39 CFR 3010.261 as follows:

**§ 3010.261 Passthrough requirement.**

- (a) Except as provided in § 3010.262, all percentage passthroughs for workshare discounts must be set within the bands as specified in paragraphs (b) through (c) of this section.
- (b) 75 percent to 125 percent for Periodicals.
- (c) ~~85~~95 percent to ~~115~~105 percent for all other classes.

**2. The Commission Should Clarify the Scope of the Three Year Grace Period**

The Commission proposes a three year transition period to allow the Postal Service to bring noncompliant workshare discount passthroughs into compliance with the applicable band.<sup>39</sup> The three year transition period is also afforded to new workshare discounts.<sup>40</sup> In both cases, the Postal Service is required to submit a plan to bring the workshare discount passthroughs into compliance within the three year transition period.

The Commission should clarify in the final rule that the three year transition period only applies to existing workshare discounts that are *not* currently in compliance. The language of the proposed rule is clear, but the discussion in Order No. 4258 may be subject to misinterpretation. Allowing compliant workshare discounts to fall out of compliance for a period of three years would be inconsistent with the stated intent of the proposed rule and inconsistent with the statutory objective to maximize incentives to reduce costs and improve efficiency.

The Commission should also use the final rule to clarify that all workshare discounts must be moved successively closer to ECP and into compliance within the three year transition period. Again, to allow new or existing workshare discounts to move farther away from ECP

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<sup>39</sup> See Order No. 4258 at 95; Attachment A at 36-37 (proposed 39 CFR 3010.262(a)).

<sup>40</sup> See *id.*; Attachment A at 37 (proposed 39 CFR 3010.262(b)).

within the 3-year transition period would frustrate rather than promote pricing and operational efficiency.

Accordingly, Pitney Bowes recommends that the Commission modify proposed 39 CFR 3010.262 as follows:

**§ 3010.262 Exceptions for noncompliant discounts.**

(a) For workshare discounts in existence on the effective date of this subpart that do not comply with the requirements of § 3010.261, there shall be a 3 year grace period from the effective date of this subpart to bring the applicable percentage passthroughs into compliance with the requirements of § 3010.261. Existing workshare discounts that comply with the requirements of § 3010.261 shall not be moved out of compliance with the requirements of § 3010.261.

(b) For new workshare discounts established after the effective date of this subpart that do not comply with the requirements of § 3010.261, there shall be a 3 year grace period from the establishment of the new workshare discount to bring the applicable percentage passthroughs into compliance with the requirements of § 3010.261.

(c) In each request proposing to adjust a rate associated with a workshare discount subject to the exceptions in paragraphs (a) or (b) of this section, the Postal Service shall submit a plan to bring the percentage passthroughs into compliance with the requirements of § 3010.261 prior to the expiration of the exception. The Commission will not approve any plan that proposes to move a workshare discount passthrough farther away from compliance with the requirements of § 3010.261 during the 3 year grace period.

**D. The Commission's Proposed Procedural Changes are Improvements**

Two statutory objectives address the procedural requirements of the modern rate system for market dominant products. Objective 2 requires the Commission to establish a system that is designed to “create predictability and stability in rates.”<sup>41</sup> Objective 6 requires the Commission to establish a system designed to “reduce the administrative burden and increase the transparency

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<sup>41</sup> 39 U.S.C. § 3622(b)(2).

of the ratemaking process.”<sup>42</sup> Objective 2 implicates both procedural and substantive considerations; Objective 6 is purely procedural in nature.

While the Commission found that the current system was largely successful in achieving the statutory objectives related to the structure of the rate system, it proposed several enhancements to the procedural schedule for regular rate adjustments. Specifically, the Commission proposes to extend the minimum notice period for the Postal Service to file a notice of market dominant rate adjustment from 45 days to 90 days prior to the planned implementation date.<sup>43</sup> The Commission further proposes to extend the public comment period on the initial request from 20 days to 30 days, and from 7 days to 10 days on any amended request to adjust rates.<sup>44</sup> The Commission proposes to extend the time for the Commission to issue its decision from 14 days to 21 days after the conclusion of the public comment period.<sup>45</sup> The Commission has also proposed new regulations to clarify potential actions the Commission may take in response to an incomplete rate adjustment filing.<sup>46</sup>

To its credit, the Postal Service has consistently provided more notice than is statutorily required to help mailers and mail service providers prepare to implement the proposed rate adjustments. The proposed modifications to the notice provisions would codify the Postal Service’s existing practice. The proposed extension to the public comment period will help facilitate more meaningful participation by interested parties. The extension of the Commission’s review period will facilitate improved accountability. The proposed regulations specifying potential Commission actions in response to incomplete filings are also an improvement. The Commission cannot discharge its oversight responsibilities without access to

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<sup>42</sup> 39 U.S.C. § 3622(b)(6).

<sup>43</sup> Order No. 4528 at 104.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

accurate and complete information and the Postal Service is entitled to clear guidance as to potential responses from the Commission. These changes will help facilitate the administration of rate adjustment proceedings and should be adopted.

**E. The Commission Properly Held that the Postal Service is Appropriately Allocating Institutional Costs Between Market Dominant and Competitive Products**

The PAEA requires that the Commission design a modern rate regulation system “to allocate the total institutional costs . . . appropriately between market dominant and competitive products.”<sup>47</sup> Section 3622 does not specify an amount to be allocated by market dominant products; therefore, the Commission reviewed whether the system had “a mechanism to appropriately divide total institutional costs between market dominant and competitive products in a manner reflecting the relevant statutory considerations.”<sup>48</sup>

The Commission properly determined that “although the mechanism for allocation is located outside of section 3622, the statutory and regulatory mechanisms to set the allocation of institutional costs required by sections 3633(a)(3) and 3633(b) provide a mechanism to appropriately allocate institutional costs between competitive and market dominant products.”<sup>49</sup>

A historical review of the allocation of institutional costs between market dominant and competitive products confirms that sections 3633(a)(3) and 3633(b) have provided a workable mechanism. The Commission has conducted its review of this mechanism via open and transparent processes.<sup>50</sup> The Commission’s annual compliance determinations have consistently

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<sup>47</sup> 39 U.S.C. § 3622(b)(9)(Objective 9).

<sup>48</sup> Order No. 4257 at 243 (quoting Order No. 3673 at 10).

<sup>49</sup> Order No. 4257 at 246-47.

<sup>50</sup> The PAEA requires that competitive products collectively cover what the Commission determines to be an appropriate share of the Postal Service’s institutional costs. *See* 39 U.S.C. § 3633(a)(3). The PAEA further requires the Commission to revisit its determination the appropriate share at least every five years to determine if the contribution requirement should be “retained in its current form, modified, or eliminated.” 39 U.S.C. § 3633(b). The Commission has conducted two previous rulemakings on this issue. *See* Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products (Oct. 29, 2007); Docket No.



found that collectively all competitive products are contributing more than the minimum contribution required and that competitive products are contributing an increasing share of total institutional costs each year.<sup>51</sup>

Any change in this mechanism must be carefully considered to ensure that the Postal Service continues to have the flexibility to set prices for competitive products in response to market conditions. As indicated above, because the mechanism is functioning as intended and these issues are being addressed in a parallel docket, no change is appropriate as part of this proceeding.

### **III. CONCLUSION**

The Commission correctly concluded that with respect to workshare prices the current system is not achieving the statutory objectives taking into account the factors. The Commission properly exercised its legal authority to require that workshare discounts promote ECP. For all of the reasons stated above, the Commission's proposed changes to the workshare regulations are improvements and should be adopted with modifications to maximize pricing and operational efficiency. The procedural changes for rate adjustment filings are also improvements and should be adopted as proposed. As discussed above, the Commission properly held that the current system contains a mechanism to appropriately allocate institutional costs, thus, no further action is required in this proceeding to address that issue.

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RM2012-3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs (Aug. 23, 2012). The Commission recently issued a Notice initiating another review of the institutional cost contribution requirement. *See* Docket No. RM2017-1, Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products (Feb. 8, 2018).

<sup>51</sup> *See id.*, at 246, Table II-16.

Respectfully submitted:

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